

## Historical Review of Indian Constitution

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*The constitution of India serves as a tool for the functioning of the government. For a state to be built on the rule of law, it must have a strong basis in the Constitution, which lays out how the various parts of government interact with each other and with the people. As a nation's constitution-making process unfolds, it gives a unique chance to build consensus on the country's long-term destiny. As a culmination of decades of anticolonial struggle, the drafting of India's constitution has often been hailed as a watershed moment. Though little has been written about the constitution-making process. There is a common misconception that India's anti-colonial leaders fulfilled their pledge by creating a constitution, which they saw as a logical conclusion to the British Empire in India. In spite of this, the field of Indian constitutional history has been severely depleted. As I argue in this piece, it is important to separate the lengthy, complicated, and complex history of constitution-making from the process of India's separation from the United Kingdom. Only by distinguishing between the processes of constitution-making and nation-building can constitutional and political history improve as an educational tool for understanding India's complex postcolonial dynamics.*



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## INTRODUCTION

The government of a nation is often constructed by way of an overarching system of laws, rules, and regulations. A democracy's constitution is an essential legal document that outlines the organisation of the government as well as other public authorities, as well as the powers and

functions of those public authorities, as well as the rights and responsibilities of its citizens and the interrelationships between those groups. It also outlines the standards by which the government should run the country. Although anti-colonial protests had taken place before to the constitution's drafting, they were finally over when it was completed. There is, however, a dearth of information on how the Constitution was put together. Writing India's Constitution is sometimes seen as a natural conclusion to British rule in India, or as a fulfilment of anti-colonial leaders' promises. However, as a result, the study of Indian constitutional history has been severely depleted. Constitutional and political history can only benefit from distinguishing nation-making from constitution-making in order to better comprehend post-colonial India's complicated post-colonial dynamics (Sahoo & Pattanaik, 2015).

According to the Oxford English Dictionary, the term 'constitution' is derived from the French phrase meaning law and order. In any country, the Constitution is the most important and sacred law of the land. There are several aspects to this document, including a description of how a nation's government works, the structure and methods of governance, and the fundamental rights that citizens have. It was the hope of India's founding fathers that after independence, the country would develop a type of government that would best serve its people. Since its inception in 1787, the United States has been blessed with an exceptional Constitution that has served as a light for the nation for the past seven decades. Indian democracy is largely due to the strong foundation and institutional structure provided out by the Constitution of India. 'We, the People of India,' made the historic decision on November 26, 1949, to "adopt, enact, and give to ourselves" the new Indian constitution. Dr. Bhimrao Ambedkar celebrated his 125th birthday on November 26, 2015, and both Houses of Parliament convened special sessions to mark the occasion, which included a debate on "Commitment to India's Constitution". As a result, 26 November has been designated Constitution Day each year thereafter. This day was previously observed as National Law Day according to a 1979 resolution passed by the Supreme Court Bar Association, an association of attorneys.

The founding fathers of India's Constitution aimed to "create an egalitarian society where social, economic, and political justice reigned and equality of position and opportunity was made available to all. However, due to historical and cultural causes, certain Indian citizens" are unable to successfully enjoy either equality of status or opportunity because of their social and economic disadvantages. As a result, many parts of the Constitution, notably Article 15 (4), provide protection discrimination for these socially vulnerable groups. By this clause, the state has the authority to grant exceptions for socially and educationally disadvantaged persons or designated castes and tribes despite Articles 15(1) and 29(2) (Jangir, 2013).

## **METHODOLOGY**

The present research is a historical study "methodology in this research study is not one-dimensional. It is rather host of historical, theoretical and analytical. The data is being collected from primary as well as secondary sources. Book, Journals and Magazines available in various libraries are the main source".

## **REVIEW OF LITERATURE**

Dalmia, Vasudha; Sadana, Rashmi, “The Politics of Caste Identity” states about the politics of Caste identity. It expresses that as far as this matter is concerned, it may be mentioned that reservation is required for individuals of lower castes because those who live in those parts are considerably more economically disadvantaged than those living in other sections.

Joshi, Barbara R. “Untouchable: voices of the Dalit liberation movement, Minority.” As the term suggests, the Untouchables were powerless in a variety of situations, like as attending school or participating in activities that other people were accustomed to doing; as a result, they demanded that they be given reservation.

Aravind Elangovan in his work "The Making of the Indian Constitution: A Case for a Non-nationalist Approach" suggests that we could benefit so much more by considering the long, complicated, and fraught history of constitution making separately from the process of the making of independent India. By separating nation-making from constitution-making, the field of constitutional and political history can only be a richer and more informative resource to understand the complex postcolonial developments in India.

Dr. Anil K Mohapatra’s work “Constitution of India: An Instrument of Social Change”, expresses how the Constitution of India has served as an instrument of social change. Indian Constitution has survived the test of time. It has shown its adaptability and dynamism. However, some have criticized it as too much flexible unlike any other federal state. They have therefore, suggested for the rewriting or revision of the Constitution of India.

## **DISCUSSION**

### **Brief History of the Constitution**

The Indian Constitution is the supreme legal document in the nation. This text lays forth the fundamental political concepts that are specified, the structure and processes of government institutions that are outlined, as well as the rights, duties, and responsibilities of people. "It is the world's longest written constitution, with 448 articles organised into 25 sections, 12 schedules, five appendices, and 98 amendments, making it the “longest constitution of any sovereign nation in the world (out of 120 Constitution Amendment Bills).” In addition to the original text in English, there is also an official translation accessible in Hindi. “Dr. Bhimrao Ramji Ambedkar,” who is credited with writing the Indian Constitution, is a well-known figure today (Sahoo & Pattanaik, 2015).

There is a direct link between the executive and legislative branches in the Constitution's parliamentary system. Article 74 stipulates that India's government is headed by a Prime Minister. Articles 52 and 63 of the Constitution say that the “President of India and Vice-President of India” will be in place. The President, in contrast to the Prime Minister, primarily fulfils ceremonial duties. Because of this, India's constitution is a federal one. There is a separate government for each of India's states and union territories. “Each has a Governor (in the case of states) or Lieutenant Governor (in the case of Union territories) and a Chief Minister, like the President and Prime Minister.” Panchayati Raj and Municipality were also introduced in rural and urban regions by the 73rd and 74th Amendment Act. “India's Constituent Assembly enacted the Constitution on

November 26, 1949; it went into effect on January 26, 1950." For the Purna Swaraj independence proclamation in 1930, the 26th of January was chosen as the commemorative date. Once adopted, the Union of India Act 1935 ceased to be India's founding legislation and was succeeded by the Union of India Act 1956 as its primary legal framework. It was added into the Constitution as a means of ensuring Constitutional autochthony to include Article 395, which abolished the Indian Independence Act, 1947. The Constitution aims to create brotherhood among its citizens by guaranteeing justice, equality, and liberty. In 1976, a constitutional amendment added the phrases "socialist" and "secular" to the definition (mini constitution). The 26th of January is recognised as Republic Day in India, a national holiday honouring the day the Indian Constitution was signed into law (Sahoo & Pattanaik, 2015).

### **Previous Legislations as Source**

"The Constitution of India" is a compilation of ideas from a wide variety of sources. The architects of the Constitution of India liberally took several provisions from earlier pieces of legislation while keeping in mind the requirements and circumstances of India.

#### **Government of India Act 1858**

As a result of the Revolt of 1857, the "British Government assumed direct control of territories" previously administered by the "English East India Company." The Act of 1858 was enacted to alleviate the repercussions of the uprising of 1857. Direct control was established by this act, which disbanded the "East India Company" and transferred its powers to the British crown.

On 2 August 1858, the British Parliament approved the Government of India Act 1858 (21 & 22 Vict. c. 106). In accordance with its terms, the British East India Company, which had ruled British India up until that time under Parliament's supervision, was to be dissolved and its powers transferred to the British Crown. The then-Prime Minister of the United Kingdom, Lord Palmerston, submitted a measure to transfer power of the Government of India from the East India Company to the Crown, citing serious flaws in the current structure of Indian government. However, Palmerston resigned on another issue before this bill could be passed. Eventually, on August 2, 1858, another bill was enacted that had been sponsored by Edward Stanley, 15th Earl of Derby (who later became the first Secretary of State for India). According to the provisions of this legislation, the Crown would exercise direct and official control over India. The Act was passed by the British Government after the Indian Rebellion of 1857 compelled them to do so. About a month after the Act was passed, Queen Victoria issued a proclamation to the "Princes, Chiefs, and People of India," in which she declared, "We hold ourselves obliged to the indigenous of our Indian territory by the same responsibility of duty which bind us to all our other subjects."

#### **Indian Councils Act 1861**

The Indian Councils Act of 1861, which was approved by the British Parliament, resulted in the replacement of the executive council of the Viceroy of India with a cabinet that was based on the "portfolio system." This cabinet was comprised of six "ordinary members," each of whom was "in charge of a separate department" of the Calcutta government. These departments were the "home, revenue, military, law, and finance, and (starting in 1874) public works." The passage of the

“Indian Councils Act in 1861” marked a significant juncture in the development of constitution. The Charter Act of 1833 had eliminated the legislative power, but the 1861 Act restored it. The “legislative council in Calcutta” was granted considerable competence to adopt laws for “British India as a whole, while the legislative councils in Bombay and Madras were given” the capacity to pass legislation for the "Peace and good Government" of their respective presidencies. In order to facilitate the passage of new laws, the ability to create new provinces was delegated to the Governor General. Additionally, he might appoint lieutenant governors for the same reason (Sahoo & Pattanaik, 2015).

### **Indian Councils Act 1892**

The Indian National Congress demanded that the legislative councils be expanded, and as a result, both the central and provincial legislative councils increased the number of “non-official members”. Non-official members of Indian legislative councils were now required to be “nominated” by the provincial legislative council and the Bengal Chamber of Commerce. The council had 24 members in 1892, although only five of them were Native Americans. The Indian Councils Act of 1892 was passed with the intention of increasing the size of various legislative councils in India and, as a result, increasing the engagement of Indians with regard to the administration in British India. This was accomplished through the passage of the Indian Councils Act. In the wake of the establishment of the Indian National Congress, the passage of the Indian Councils Act in 1892 constitutes a crucial turning point in the constitutional and political history of India. The passage of the Indian Councils Act in 1892 marks a crucial turning point in the constitutional and political development of India. Because of this legislation, the size of several legislative bodies in India was raised, which led to a greater level of participation by Indians in the governance of British India. The Indian Councils Act of 1892 marked the beginning of contemporary India's progression toward a representative form of government. Because the British only made a small concession, the legislation laid the groundwork for the establishment of revolutionary forces in India, setting the foundation for their rise.

### **Indian Councils Act 1909**

Indian Councils Act 1909, also known as the Morley-Minto Reforms, was an Act of the British Parliament that led to a modest increase in the participation of Indians in the administration of British India. The Indian Councils Act (1909), often referred to as the Morley-Minto Reforms, was an act that was passed by the Parliament of the United Kingdom in 1909 that expanded the amount of involvement of Indians in the administration of British India to a lesser but still significant degree. This act amended both the Indian Councils Act of 1861 and the Indian Councils Act of 1892. Morley, who was the secretary of state at the time, and Minto, who was the viceroy at the time, are the namesakes of the Morley-Minto Reforms, which were named after the two men. Under the provisions of this statute, the idea of a distinct electorate was first put up. The Indian Councils Act of 1909 was enacted so that the Indian National Congress could win over the support of its more moderate members as well as Muslims. Its purpose was to implement the electoral principle in India's imperial and local legislative councils so that members could be chosen democratically. The following are some reasons why the Act of 1909 was significant:

“It essentially made it possible for Indians to be elected to India's numerous legislative councils for the first time. A few Indians had previously been nominated to legislative councils.

Even if this was not what Morley intended, the establishment of the electoral concept provided the foundation for a parliamentary system.

Muslims had expressed grave worries that a first-past-the-post electoral system, similar to that of Britain, would consign them to Hindu majority rule indefinitely. According to what the Muslim leadership wanted, the Act of 1909 provided.”

### **Government of India Act 1919**

An Indian career path was made possible by an act of the British government following World War I. The Government of India Act of 1919, which was also known as the Councils Act of 1919, had the primary objective of broadening the participation of the Indian people in the governing bodies of their country. The Act also called for a Dual System of Government, in which all of the activities that were governed by the government were separated into two separate lists. The Indian Representation Act was passed with the primary intention of achieving the goal of ensuring that Indians have a voice in government. Reforms were implemented in both the federal and provincial levels of government as a result of the Act. Diarchy was instituted at the provincial level as of recently. Diarchy refers to the existence of two distinct sets of governments, one of which is accountable for its actions while the other is not. A distinction was made between "central subjects" and "provincial subjects," which resulted in a loosening of control over the provinces. Reforms were implemented in both the federal and provincial levels of government as a result of the Act. It included provisions for a Dual System of Government, in which all activities handled by the government were separated into two separate lists. With the passing of the Government of India act in 1919, the British administration made clear for the first time its aim to gradually transition India toward a more responsible form of government. The people were granted more power in administrative matters, and the pressure that the government exerted on administrative matters was cut significantly. In accordance with its provisions, the bill provides:

“Easing the way the central government treats the provinces by separating the central and provincial subjects.

Splitting the provincial subjects into two parts: transferred and reserved. Transferred subjects are run by the governor with the help of ministers who are accountable to the legislative council. Reserved subjects are run by the governor with the help of ministers who are responsible to the legislative council (that has been to be administered by the governor and the executive council without being responsible towards the legislative council).

Diarchy, Bicameralism, direct elections, and a central public service commission were all put in place in 1926.”

### **Government of India Act 1935**

Despite never being fully implemented, the Government of India Act of 1935 had a significant impact on India's constitution. The Constitution was heavily influenced by this Act. The 321

sections and 10 schedules make it a lengthy and detailed document. The Government of India Act of 1935 established a federal system as the basis for India's governmental structure. This act put an end to the system of dyarchy that had been established by the Government of India Act of 1919 and made provisions for the construction of a Federation of India that would be comprised of the provinces of British India as well as part or all of the Princely states. The Government of India Act from 1935 was the first attempt to grant the provinces some level of autonomy over their own affairs. The progress of women's participation in the decision-making process benefited from the creation of separate electorates for women. This Act also proposed the construction of a federal government in India, which would open the door for princes to take part in the country's political processes. The new Act provided the Governors and Governor-General with a great deal of leeway in the exercise of their discretion. The act did not successfully provide for an appropriate federal organisation; rather, the governor general retained the majority of the power.

### **Indian Independence Act 1947**

The Delegate of the INC (Indian National Congress) and the Muslim League (ML), and the Sikh Community ultimately reached to a final conclusion with Lord Mountbatten and formed the Mountbatten Plan of 3 June, which came into effect on the 3rd June of 1947. Lord Mountbatten and Clement Attlee drafted the legislation that resulted from that agreement. It was intended that India and Pakistan would be the dominions of the British Commonwealth of Nations till their respective constitutions were finished and approved. This arrangement lasted up until the 18th of July, 1947, when British India was partitioned into two independent states: India and Pakistan. In order to accommodate the newly formed states, the Constituent Assembly was split in half, and the powers of sovereignty were distributed among the two new assemblies in accordance with their respective dominions. As a direct consequence of the Act, British suzerainty over the princely states was terminated, and the princely states were free to decide for themselves whether or not to become a part of either of the two newly established dominions or to keep their status as independent nations.

### **Constituent Assembly**

The Constituent Assembly, elected by the elected members of the provincial assemblies ultimately drafted the Constitution. "Dr. B.R. Ambedkar, Sanjay Phakey, Jawaharlal Nehru, C. Rajagopalachari, Rajendra Prasad, Sardar Vallabhbhai Patel, Kanaiyalal Munshi, Purushottam Mavalankar, Sandipkumar Patel, Maulana Abul Kalam Azad, Shyama Prasad Mukherjee, Nalini Ranjan Ghosh, and Balwantrai Mehta were some important figures in the Assembly. There were more than 30 members of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H. P. Modi. The Chairman of the Minorities Committee was Harendra Coomar Mookerjee, a distinguished Christian who represented all Christians other than Anglo-Indians. Ari Bahadur Gurung represented the Gorkha Community. Prominent jurists like Alladi Krishnaswamy Iyer, Benegal Narsing Rau and K. M. Munshi, Ganesh Mavalankar were also members of the Assembly. Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh, Rajkumari Amrit Kaur and Vijayalakshmi Pandit were important women members. The first temporary 2-day President of the Constituent Assembly was Dr. Sachidanand Sinha.

Later, Rajendra Prasad was elected President of the Constituent Assembly. The members of the Constituent Assembly met for the first time on 9 December 1946.” (Sahoo & Pattanaik, 2015).

### **Drafting**

At the “Assembly meeting on August 14, 1947, a plan to set up different committees was presented. There was a Committee on Fundamental Rights, a Committee on Union Powers, and a Committee on the Union Constitution. On August 29, 1947, Dr. B. R. Ambedkar was named Chairman of the Drafting Committee, which had six other members and a constitutional advisor to help them. These members were Pandit Govind Ballabh Pant, Kanaiyalal Maneklal Munshi (K M Munshi, ex-Home Minister of Bombay), Alladi Krishnaswamy Iyer (ex-Advocate General of Madras State), N Gopalaswamy Ayengar (ex-Prime Minister of J&K and later a member of the Nehru Cabinet), B L Mitter (ex-Advocate General of India) (Scion of Khaitan Business family and a renowned lawyer). Sir Benegal Narsing Rau was the constitutional advisor. From 1950 to 1954, he served as the first Indian judge on the International Court of Justice. Later, B L Mitter quit, and Madhav Rao took his place (Legal Advisor of Maharaja of Vadodara). Because D.P. Khaitan had died, T.T. Krishnamachari was chosen to be on the writing committee. The committee put together a draught of the Constitution, which was given to the Assembly on November 4, 1947. Over the course of two years, more than 2,000 changes were made to the draught constitution. The process was finally done on November 26, 1949, when the Constituent Assembly passed the constitution. After 284 people signed the document, the Constitution-making process was done. The Assembly met in public for 166 days, which took place over the course of 2 years, 11 months, and 18 days. On January 24, 1950, the 308 members of the Assembly signed two copies of the Constitution, one in Hindi and one in English (Bhat, 2022). The original Constitution of India was written by hand in beautiful calligraphy. Artists from Shantiniketan, such as Beohar Rammanohar Sinha and Nandalal Bose, decorated and adorned each page. On January 26, 1950, which was two days later, the Constitution of India became the law in all of India's States and territories. The official estimate of how much the constituent assembly would cost was 1,000,000 rupees.”

### **DIFFERENCES OVER FUNDAMENTAL RIGHTS**

According to Austin, when discussing the Indian constitution's inclusion of fundamental rights, “although there was some disagreement on techniques, there was little on principles.”(Austin , 1966) But even a quick look at how the fundamental rights were discussed in the committees shows that members had very different ideas not only about “techniques,” but also about what was right and wrong. The draughts of fundamental rights that Ambedkar and Munshi wrote are a great example of how different their ideas are. Ambedkar wanted to protect the interests of the “lower” and “downtrodden” castes, so he wrote in the preamble that the constitution would “remove social, political, and economic inequality by giving the submerged classes better opportunities” and “make it possible for every subject to enjoy freedom from want and freedom from fear.”(Rao , 1967). “In foregrounding the rights of these marginalized groups and by qualifying freedom to include ‘freedom from fear,’ Ambedkar sought to institutionalize the mechanism of eliminating caste-based discrimination from Indian society.”(Elangovan , 2014)

In contrast, Munshi created a catalogue of essential constitutional rights that were particularly moderate, and devoid of the specific "concerns" that characterised the rest drafts prepared by luminaries such as Bhim Rao Ambedkar. Not Ambedkar, but Munshi wrote the document that was ultimately utilised to define the "fundamental rights in the constituent assembly." The purpose of comparing "Munshi and Ambedkar's" perspectives on fundamental rights is not to support the one or less than the other. Somewhat, these opposing viewpoints constituted the two extremities of the political field that faced off in the "constituent assembly". The ensuing "compromise" must be viewed as a question of "how much was 'lost' in the process of defining these rights", rather than as 'accommodation' of political differences, as described by Austin. Ambedkar and Munshi, two of India's most complicated characters, are not reduced to ideological viewpoints, but rather a forgotten history of a hard-fought effort to define the subjectivity of citizenship in the context of India's volatile social and political history when the constitution was created (Elangovan , 2014).

## **LIBERALISM**

The Constitution of India Bill of 1895 is often seen as the beginning of India's lengthy history of constitution-making. Although its origin is unknown, this bill was drafted by the first movers and shakers of the liberation struggle. Liberal institutions like the separation of powers and some fundamental rights are included, but the document does not explicitly declare its liberal orientation. While a more thorough examination of the character of Indian liberalism during the constitution-making process merits further investigation, the focus of this essay is on the Constituent Assembly's most intense time of constitution-drafting (Krishnaswamy).

A Constituent Assembly (hereinafter referred to as a "CA") formed the Constitution of India in 1950 after debating the matter for 165 days over a period of slightly less than three years. An in-depth analysis of these arguments sheds light on the degree to which the men who drafted the Constitution made reference to the ideology of liberalism when attempting to explain or justify the constitutional design decisions they made. It is noteworthy that the CA did not at any point participate in a debate regarding the possibility of incorporating the words "liberal" or "liberalism" in the actual language of the constitution. However, there were two debates in which the term "liberalism" was used to support revisions to draught provisions of the Constitution. Both of these debates were held in support of the amendments.

K.T. Shah asked the constituent Assembly to draft a new "Article 40A" that would specifically mandate a complete separation of Legislature, Executive and Judiciary which are the three most important branches of government. According to his argument, this is an extremely fundamental prerequisite for a liberal constitution. He made a clear distinction "between the institutional arrangements' characteristic of the 'liberalism of the English constitution' and the 'liberal constitution'" of the United States in order to demonstrate a complete "separation of powers between all three branches" of government in the "American model" ought to serve as the model for the "Indian Constitution." This amendment was shot down, but Article 50 of the constitution still contains a slightly amended version of the "separation of powers principle that guarantees" the separation of the judicial branch from the executive branch at the lower levels of government.

The second argument that invoked liberalism to support an amendment to the constitution “sought to add the freedom of the press and publication specifically to the existing Article 19(1)(a), which guarantees free speech and expression. Once again, it was K.T. Shah who argued quite forcefully that in order for the Constitution of India to be labelled a ‘progressive liberal constitution,’ it must clearly guarantee for the preservation of press freedom.” This argument was made by K.T. Shah. In spite of his persuasive argument, the CA voted against the amendment, and it became the responsibility of the Supreme Court to interpret the Constitution in a way that would include freedom of the press.

To begin, as was mentioned before, liberalism was seldom ever brought up during the process of writing the constitution as an attempt to explain or justify the constitutional decisions that were taken in the CA. Second, if constituents of the CA used liberalism in defence of proposed changes, those constituents were generally political outsiders in the CA, and their amendments were shot down as a result. Thirdly, every time a member mentioned liberalism when describing the constitution, they did it in order to stress how absent it was from the document. Some of the members expressed gratitude for the shift away from constitutional liberalism, while others expressed regret over the absence of liberalism in the Constitution. Due to this, by paying close attention to the CA debates, we are beginning to have doubts about the presumptions that the Indian Constitution has a character that is unwaveringly liberal. This discourse on the drafting process points to an alternate conclusion, namely, that the people who drafted the Constitution purposefully avoided portraying their efforts as being geared towards the creation of a liberal constitution.

## CONCLUSION

I have argued in this historiographical essay for using a “non-nationalist approach” to the study of the history of the “Indian constitution”, and I have outlined a broad trajectory of researching the “making of the Indian constitution”. This will help readers comprehend the history of the document. Politicians of today are playing a significant part in the formation of reserve policy. In some states, such as Bihar and Tamil Nadu, there is a divide between backward castes, which experience one or the other sort of socio-economic disparity, and most backward castes, who experience an elevated sort of social discrimination and are only slightly more privileged than Dalits in terms of their status. Backward castes experience some socio-economic disadvantage. The socio-economic position of backward castes is often inferior. In point of fact, in contrast to Scheduled Castes, Other Backward Classes are not required to be Hindu, and a number of states provide advantages to certain Muslim and Christian communities. Because the criteria for this list are not as severe, it is the list that is most susceptible to change. As a result, politicians frequently add items to this list in an effort to appease particular subsets of their constituents.

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